IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7869 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRESH @ HAKO BABULAL KERANI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Ms.Banna Datta, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 3-5-1999 passed by

respondent No. 1 - The Commissioner of Police, Rajkot against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that in all two criminal cases were registered against the petitioner at Pradyuman Nagar police station Rajkot on 22-12-1998 and 4-2-1999 respectively for the offence made punishable under Section 457, 380 etc of IPC. That both the cases are pending for trial. It also appears that the petitioner was arrested on 26-3-99 in respect to criminal case registered vide C.R. No : 97 of 1999 and was released on bail on 7-4-1999. Over and above, two witnesses have sated vide their respective statement dated 1-5-1999 and 2-2-1999 regarding the alleged anti social activities of the petitioner without giving any date of incidents. That on the basis of the said material, the respondent No.1 - The Commissioner of Police, Rajkot as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind in asmuch as the detaining authority has failed to consider the aspect of less drastic remedy before passing the impugned order.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detenu was released on bail on 7-4-1999. That thereafter on the basis of the statements given by the witnesses, the detaining authority has come to the conclusion that the petitioner is likely to repeat the said activities. However, the ground of detention does not suggest any fact from which it could be inferred that the aspect of less drastic remedy like claiming cancellation of bail in pending cases against the petitioner was ever considered. Under these circumstances, it is difficult to uphold the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 3-5-1999 passed by respondent No. 1 - The Commissioner of Police, Rajkot against the petitioner is hereby quashed and set aside. The petitioner - Chandresh @ Hako Babulal Kerani is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

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